

CENTRAL DISTRICT OF CALIFORNIA

Defendants.

)
) Civil Case No. 2:16-cv-01843
)
) **COMPLAINT FOR COPYRIGHT**
) **INFRINGEMENT AND RELATED**
) **CLAIMS**
)
) **DEMAND FOR JURY TRIAL**
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Plaintiffs NELSON MOTIVATION and DR. BOB NELSON (collectively “plaintiffs”), by and through its counsel, allege as their complaint against WALTON MOTIVATION, INC. and DAVID OLSON (collectively “defendants”) as follows:

NATURE OF THE ACTION

1
2 1. This is an action for copyright infringement pursuant to 17 U.S.C. §
3 501, *et seq.*, declaratory relief under 28 U.S.C. § 2201, and breach of contract,
4 misappropriation of name and likeness, and unfair competition under California
5 state law.

THE PARTIES

6
7 2. Plaintiff NELSON MOTIVATION, INC. (“NMI”) is a California
8 Corporation in San Diego, California.

9 3. Plaintiff DR. BOB NELSON is an individual residing in San Diego,
10 California.

11 4. Defendant Walton Motivation, Inc. (“Walton”) is a corporation
12 organized under the laws of Pennsylvania and having an address of 2702 W. Allen
13 Street, Allentown, Pennsylvania 18104-4728

14 5. Plaintiff DAVID OLSON is an individual residing in Allentown,
15 Pennsylvania.

16 6. Plaintiffs are unaware of the actions, names and/or true capacities of
17 other parties referred to herein as DOES 1 - 10, whether individual, corporate
18 and/or partnership entities and therefore will seek leave to amend this complaint
19 when their actions and/or true names and capacities are ascertained.

20 7. Plaintiffs are informed and believe, and thereupon allege, that said
21 parties are in some manner responsible for the wrongs alleged herein, and that at
22 all times referenced each was the agent and servant of the other Defendants and
23 was acting within the course and scope of said agency and service.

24 8. Plaintiffs are informed and believe, and thereupon allege, that at all
25 relevant times herein, each of the Defendants herein, directed, knew or reasonably
26 should have known of the acts and behavior alleged herein and the damages
27 caused thereby, and by their actions and/or inactions directed, ratified and
28 encouraged such acts and behavior. Plaintiffs further allege that Defendants had a

1 non-delegable duty to prevent or cure such acts and the behavior described herein,
2 which duty Defendants failed and/or refused to perform.

3 **JURISDICTION AND VENUE**

4 9. This Court has subject matter jurisdiction over this lawsuit under 28
5 U.S.C. § 1338 because the action arises under the copyright and declaratory
6 judgment laws of the United States, and pendant jurisdiction of any and all state
7 causes of action under 28 U.S.C. § 1367.

8 10. This Court has personal jurisdiction over defendants because
9 defendants systematically and continuously direct business activities toward and
10 into the Central District of California through sales, marketing, and advertising.

11 11. Venue is proper and reasonable in this district under 28 U.S.C. §
12 1391(b)(1) & (2) because a substantial part of the events or omissions giving rise
13 to the claims herein occurred in this district and defendants have significant,
14 substantial and continuous contacts with the district.

15
16 **FACTS**

17 12. Plaintiff Dr. Bob Nelson is a leading expert on employee motivation,
18 performance, engagement, recognition, and rewards. He holds an MBA in
19 organizational behavior from UC Berkeley and received his PhD in management.
20 He has taught in the MBA program at the Rady School of Management at the
21 University of California in San Diego.

22 13. Dr. Nelson has worked with the majority of Fortune 500 companies
23 and has presented on six continents. He has appeared extensively in the national
24 media including CBS 60 Minutes, CNN, MSNBC, CNBC, PBS, National Public
25 Radio and has been featured in The New York Times, The Wall Street Journal,
26 The Washington Post, BusinessWeek, Fortune, Inc., and other media to discuss
27 how to best motivate today's employees.

28 14. Dr. Nelson has sold 4 million books on management and motivation,

1 which have been translated into 37 languages, including 1001 Ways to Reward
2 Employees, now in a new edition entitled 1501 Ways to Reward Employees, The
3 1001 Rewards & Recognition Fieldbook, 1001 Ways to Take Initiative at Work,
4 Keeping Up in a Down Economy: What the Best Companies Do to Get Results in
5 Tough Times, and The Management Bible.

6 15. NMI is the assignee of Dr. Nelson's copyright rights to *inter alia* the
7 works entitled list "1501 Ways to Reward Employees" and "1001 Ways to
8 Reward Employees," (the "Works"), which are the subject of U.S. Copyright
9 Registration Nos. TX 7-547-752, TX 6-196-443 and TX 3-789-192. True and
10 correct copies of the copyright registrations are attached hereto as **Exhibit A**.

11 16. Dr. Nelson is also the president of Nelson Motivation Inc., a
12 management training and consulting company located in San Diego, California
13 that specializes in helping organizations improve their management practices,
14 programs, and systems.

15 17. On or about April 20, 2010, Nelson Motivation, Inc. entered into a
16 license agreement with Walton Motivation, Inc. (the "License Agreement"). The
17 License Agreement granted Walton Motivation, Inc. a right to use plaintiffs'
18 intellectual property including, the copyright in the Works, plaintiffs' trademarks,
19 and Dr. Bob Nelson's likeness. A true and correct copy of the license agreement
20 is attached hereto as **Exhibit B**.

21 18. As part of Dr. Nelson's compensation for the License Agreement, he
22 was granted eight (8) of the one hundred (1) original shares in Walton. Dr.
23 Nelson subsequently purchased and acquired one (1) additional share. Dr.
24 Nelson's nine (9) shares were later split 10 to 1 becoming ninety (90) total
25 shares of stock.

26 19. Plaintiffs' likeness and the Works were integrated by Walton into
27 advertising, website marketing, and a new software service entitled Recognition
28 PRO.

1 20. Due to poor business decisions and mismanagement by its president
2 and primary shareholder, David Olson, Walton was ultimately unsuccessful
3 accruing \$200,000 in outstanding debt.

4 21. In or about April 2015, the license agreement between Walton and
5 Nelson Motivation terminated. Nonetheless, defendants continued to use
6 plaintiffs' name, likeness and Works in advertising for RecognitionPRO. A true
7 and correct copy of the RecognitioPRO.com website dated January 20, 2016 is
8 attached hereto as **Exhibit C**.

9 22. Plaintiffs allege on information and belief that defendants have
10 maintained in their possession and/or control an unauthorized copy of the
11 RecognitionPRO underlying software, which infringes plaintiffs' rights to the
12 Works. Attached hereto as **Exhibit D** is information from plaintiff's copyright
13 work which appears directly as data in the infringing RecognitionPRO software.

14 23. Plaintiffs have repeatedly provided notice to defendants to cease all
15 use of plaintiffs' name, likeness and Works, but defendants have failed to do so.
16 Defendants have acknowledged that they have no right to use Dr. Nelson's
17 likeness. Additionally, defendant David Olson, the largest shareholder of
18 Walton, unilaterally alleged Dr. Bob Nelson's shares were "forfeited" despite
19 providing no notice, accounting, or other corporate record reflecting such a
20 forfeiture.

21 24. Plaintiffs allege on information and belief that David Olson had full
22 knowledge of the infringement and misappropriation of likeness, and individually
23 directed the infringing acts and omissions. Plaintiffs further allege on information
24 and belief that David Olson is directing the infringing acts and provided for the
25 forfeiture of shares to personally profit outside his role as an officer and primary
26 shareholder of Walton.

27 **First Claim for Relief**
28 **(Copyright Infringement)**

1 25. Plaintiffs repeat and incorporate by reference the statements and
2 allegations in paragraphs 1 to 23 of the complaint as though fully set forth herein.

3 26. At all times relevant hereto, plaintiff NMI has been the assignee of all
4 copyright rights or rights to assert copyright claims for the Works.

5 27. Without authorization, defendants used, copied, reproduced, and
6 republished the copyrighted material. Defendants' copying, reproduction, and
7 republication were commercial in character and purpose. Defendant either
8 completely or substantially used plaintiff's copyrighted content. Because the
9 copying was for the purpose of competing with plaintiff, it did not constitute fair
10 use under any doctrine of copyright law.

11 28. Plaintiffs did not authorize defendant's copying, displaying, or
12 republishing of the works. Defendants infringed the copyrights of plaintiff's
13 creative works by reproducing, republishing, publicly displaying, and creating
14 derivatives of the works.

15 29. As a result of defendants' infringement, plaintiffs have suffered, and
16 will continue to suffer, substantial losses.

17 30. Defendants knew the infringed works belonged to plaintiff and that it
18 did not have authorization to exploit plaintiff's works. Defendants' infringements
19 were therefore willful.

20 31. On information and belief, defendants induced, caused, and
21 materially contributed to the infringing acts of others by encouraging, inducing,
22 allowing, and assisting others to reproduce and republish plaintiff's works.
23 Further, on information and belief, defendant had knowledge of the infringing acts
24 of others relating to plaintiff's copyrighted works.

25 32. On information and belief, defendants had the right and ability to
26 control the infringing acts of the individuals and entities that directly infringed
27 plaintiff's works. Further, on information and belief, defendants obtained a direct
28 financial benefit from the infringing activities of the individuals or entities that

1 directly infringed plaintiff's works.

2 33. Defendants' actions, as set forth above, constitute copyright
3 infringement in violation of the Copyright Act, 17 U.S.C. § 501, *et seq.*, all to the
4 damage of plaintiff as previously alleged.

5 **Second Claim for Relief**

6 **(Breach of Contract)**

7 34. Plaintiffs repeat and incorporate by reference the statements and
8 allegations in paragraphs 1 to 33 of the complaint as though fully set forth herein.

9 35. Defendants' use of plaintiffs' copyright and likeness after termination
10 of the License Agreement constitutes an explicit and material breach of the
11 agreement. Moreover, defendants' have failed to conduct and provide a proper
12 accounting of sums, including royalties, due to plaintiff under the License
13 Agreement.

14 36. Plaintiffs' have suffered damages and continue to suffer harm from
15 defendants' breach. Plaintiffs' also have no adequate remedy at law.

16 37. Defendants' conduct has been willful and deliberate.

17 38. Plaintiffs are therefore entitled to damages and specific relief for
18 defendants' breach.

19 **Third Claim for Relief**

20 **(Misappropriation of Name and Likeness, Cal Civ. Code § 3344 *et seq.*)**

21 39. Plaintiffs repeat and incorporate by reference the statements and
22 allegations in paragraphs 1 to 38 of the complaint as though fully set forth herein.

23 40. Defendants, by virtue of their acts as alleged above, have willfully,
24 knowingly, and intentionally misappropriated Plaintiff Dr. Bob Nelson's name
25 and likeness in adopting and marketing products under the name Dr. Bob Nelson,
26 to defendants' commercial and other advantage, in violation of the statutory and
27 common law of the State of California.

28 41. As a result of the foregoing, plaintiffs have been injured, and

1 defendants have received illicit profits and wrongful gains.

2 42. Defendants' conduct has also caused, and if not enjoined, will
3 continue to cause irreparable damage to Plaintiffs in a manner that cannot be
4 calculated or compensated in money damages. Plaintiffs have no adequate
5 remedy at law for such harm.

6 43. Defendants' conduct has been willful and deliberate.

7 **Fourth Claim for Relief**

8 **(Violation of Right of Publicity, Cal Civ. Code § 3344 *et seq.*)**

9 44. Plaintiffs repeat and incorporate by reference the statements and
10 allegations in paragraphs 1 to 43 of the complaint as though fully set forth herein.

11 45. Defendants, by virtue of their acts as alleged above, have willfully,
12 knowingly, and intentionally violated plaintiff Dr. Bob Nelson's right of publicity
13 in using without authorization his name and likeness in adopting and marketing
14 products under the name Dr. Bob Nelson to defendants' commercial and other
15 advantage, in violation of the statutory and common law of the State of California.

16 46. As a result of the foregoing, plaintiffs have been injured, and
17 defendants have received illicit profits and wrongful gains.

18 47. Defendants' conduct has also caused, and if not enjoined, will
19 continue to cause irreparable damage to plaintiffs in a manner that cannot be
20 calculated or compensated in money damages. Plaintiffs have no adequate
21 remedy at law for such harm.

22 48. Defendants' conduct has been willful and deliberate.

23 **Fifth Claim for Relief**

24 **(Declaratory Relief)**

25 49. Plaintiffs repeat and incorporate by reference the statements and
26 allegations in paragraphs 1 to 48 of the complaint as though fully set forth herein.

27 50. Defendants have claimed that Dr. Bob Nelson's shares in Walton
28 were "forfeited" and that plaintiff no longer holds shares in Walton.

1 51. Defendants have provided no documentation of any such forfeiture
2 nor provided plaintiff with proper accounting.

3 52. An actual case and controversy exists with respect to the ownership
4 of shares in Walton.

5 53. As such, plaintiff Dr. Bob Nelson entitled to a declaratory judgment
6 that his shares in Walton were not forfeited.

7 **Sixth Claim for Relief**

8 **(State Law Unfair Competition – Cal. Bus. & Prof. Code §17200)**

9 54. Plaintiffs repeat and incorporate by reference the statements and
10 allegations in paragraphs 1 to 53 of the complaint as though fully set forth herein.

11 55. Defendant's acts as set forth herein constitute unfair competition as
12 defined in California Business and Professions Code § 17200, *et seq.*, all to the
13 damage of plaintiff as previously alleged.

14 **Seventh Claim for Relief**

15 **(Common Law Unfair Competition)**

16 56. Plaintiffs repeat and incorporate by reference the statements and
17 allegations in paragraphs 1 to 55 of the complaint as though fully set forth herein.

18 57. Defendants' acts, as set forth above, constitute unfair competition as
19 defined by California common law, all to the damage of plaintiff as previously
20 alleged.

21 **PRAYER FOR RELIEF**

22
23 WHEREFORE, Plaintiffs ask that this Court grant judgment against
24 defendant for the following:

25 A. Defendants, its officers, agents, servants, employees, and attorneys,
26 and all persons in active concert or participation with any of them, be
27 temporarily restrained, and preliminarily and permanently enjoined from:

28 i. infringing plaintiff's copyright, including without limitation using

1 the RecognitionPRO software, RecognitionPro.com domain name
2 or website;

3 ii. using any likeness similar to plaintiffs, including without
4 limitation Dr. Bob Nelson;

5 iii. competing unfairly with plaintiff in any manner, including
6 infringing any of plaintiff's copyright and trademark rights; and

7 iv. conspiring, encouraging, inducing, allowing, abetting, or assisting
8 others in performing any of the activities referred to in
9 subparagraphs (i) - (iii) above.

10 B. Defendants, their officers, agents, servants, employees, and attorneys,
11 and all persons in active concert or participation with any of them, deliver
12 for destruction, or show proof of destruction of, any and all products, labels,
13 signs, prints, packages, wrappers, receptacles, and advertisements, and any
14 other materials in its possession or control that depict or reference any of
15 plaintiff's copyrighted materials any materials or articles used for making
16 or reproducing the same.

17 C. Defendants file with the Court and serve on plaintiff, within 30 days
18 after the entry and service on defendant of an injunction, a report in writing
19 and attested to under penalty of perjury setting forth in detail the manner
20 and form in which defendant has complied with the provisions of
21 subparagraphs (A) and (B) above.

22 D. Plaintiffs recover all damages they have sustained as a result of
23 Defendants' infringement.

24 E. An accounting be conducted of defendant's corporation, including a
25 determination of defendant's profits resulting from its infringement and
26 unfair competition and plaintiff's unpaid royalties and that the sums be paid
27 over to plaintiff, increased as the Court determines is appropriate to the
28 circumstances of this case.

- 1 F. Plaintiffs be awarded defendants' profits, corrective advertising
2 damages and enhanced damages.
3 G. Plaintiffs be awarded statutory damages.
4 H. Plaintiffs be awarded his reasonable attorneys' fees for prosecuting
5 this action.
6 I. Plaintiffs recover his costs of this action and pre-judgment and post-
7 judgment interest, to the full extent allowed by law.
8 J. Plaintiffs receive all other relief the Court deems appropriate.
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10

11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs hereby demand a trial by the jury on his claims herein and all
13 issues and claims so triable in this action.
14

15 Respectfully submitted,

16 Dated: March 17, 2016

MANDOUR & ASSOCIATES, APC

17
18 /s/ Ben T. Lila

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21 Attorneys for plaintiffs,

22 NELSON MOTIVATION, INC. and

23 DR. BOB NELSON
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